

## **§ 20299. Agricultural Employee Relief Fund**

(a) This subsection shall apply to all cases in which the Board has ordered monetary relief for agricultural employees or has issued an order approving a settlement agreement providing for payment of monies to agricultural employees, where the collection of monies pursuant to such orders or settlement agreements occurred on or after January 1, 2002. In addition, this subsection shall apply where the collection of monies occurred prior to January 1, 2002 if the monies were not subject to an enforceable promise to return them to the employer and had not escheated to the State by operation of law as of January 1, 2002.

(1) Where, despite diligent efforts, the Board has been unable to locate employees or any person(s) legally entitled to collect money on their behalf for a period of two years after the date the Board collected monies on behalf of such employees, those monies shall be deposited in a special fund in the State Treasury that shall be named the Agricultural Employee Relief Fund (Fund).

(2) Provisions requiring that monies collected on behalf of employees who are not located within two years after the date of collection be deposited in the Fund may be included, pursuant to the mutual agreement of the Regional Director and the employer, in informal settlement agreements reached in accordance with section 20298.

(b) When a regional director has good cause to believe that the collection of the full amount of monetary relief previously ordered by the Board is not possible after reasonable efforts have been made to collect the balance from the employer, the regional director shall file a motion seeking a finding by the Board that the case is eligible for pay out from the Fund. In the case of formal settlement agreements, as defined in section 20298, where there has been a prior adjudication by the Board of the amounts owing, such adjudication shall define the full amount of monetary relief owing to employees. Where there has not been a prior adjudication of the amount owing to employees, the full amount owing to employees shall be the amount specified in the formal settlement agreement. The motion shall be filed with the Board and served on the parties to the case in accordance with sections 20160 and 20166, and shall be accompanied by a statement describing the collection efforts made to date and the basis for the regional director's belief that collection of the full amount owing is not possible. Any party to the case may file a response within ten (10) days of service of the motion. If the Board grants the

motion, the case shall become eligible for pay out from the Fund, in accordance with the provisions below.

(1) Within ninety days after the end of each fiscal year, the Board shall determine the amounts to be paid to eligible employees and shall begin distribution of those amounts.

(2) Employees eligible for pay out from the Fund shall be those entitled to monetary relief pursuant to orders in cases in which the Board has made the Fund eligibility finding specified in subsection (b) above. Such employees shall be included in the next annual determination referred to in subsection (b)(1). Eligibility shall continue for two successive annual determinations. Thereafter, eligibility for pay out from the Fund shall expire. In no event shall an employee be paid an amount from the Fund exceeding the amount owed but not collected from his or her employer.

(3) The amount to be distributed to each employee eligible for pay out shall be calculated as follows. The total amount of unallocated money in the Fund shall be divided by the aggregated total of the amounts owing to eligible employees. The resulting ratio shall be multiplied by the amount owing to each eligible employee to determine the amount to be distributed to each eligible employee. However, if the ratio is greater than one, it shall be deemed to be one for the purpose of calculating the amounts to be distributed and any monies in excess of the amounts necessary for distribution shall remain in the Fund for future distributions. For the purpose of the above calculation, the “amount owing to each eligible employee” shall not include any amounts allocated to the employee in previous fiscal years.

(4) Notwithstanding subsection (3) above, no amount less than one dollar shall be allocated or distributed to any employee.

(5) Where money from the Fund cannot be distributed because the employee to whom it is assigned cannot be located and/or does not claim the money, the money shall be held in the Fund for distribution to that employee until one year has elapsed from the expiration of eligibility for distribution from the Fund, at which time the claim shall be extinguished and the money shall revert to the Fund for use in making payments to other eligible employees. Eligibility for distribution shall be deemed to have expired after all allocations for which an employee is eligible or upon an employee being allocated 100% of the amount owed, whichever comes first. However, where a claimant can demonstrate that extraordinary circumstances prevented distribution or receipt of monies owing prior

to the time that the claim was extinguished, the Board may approve payment of the claim.

(c) The provisions of subsection (b) shall be applied to every distribution from the Fund, unless the Board, within ten (10) days of the determination referred to in subsection (b) (1), finds that application of those provisions will result in manifest injustice. In the event of such a finding, the Board may alter the distribution in order to avoid such injustice.

(d) A motion to make a case eligible for pay out from the Fund pursuant to subsection (b) of this section shall be deemed to include a simultaneous motion to close pursuant to *John V. Borchard, et al.* (2001) 27 ALRB No. 1. In such event, the filing requirements set forth in this section shall be controlling. In the event that a closed case is later reopened pursuant to the criteria set forth in *John V. Borchard, et al.* (2001) 27 ALRB No. 1 and further collection of monies from the employer is effectuated, the Fund shall be reimbursed to the extent that the combination of the amount collected from the employer and the amount paid from the Fund exceeds the full amount owed to employees in that case.

Authority: Section 1144, Labor Code

Reference: Section 1161, Labor Code